

REMARKS

This invention provides for new concentrated aqueous emulsions comprising a film-forming agent and a surface-active agent, the process for preparing them and their use in the field of pesticides.

In response to the restriction requirement, Applicants elect the invention of group I, claims 1-6. This election is made with traverse and without prejudice to Applicant's right to file divisional applications directed to the non-elected subject matter. It is respectfully requested that the restriction requirement be favorably reconsidered and withdrawn.

Applicants respectfully urge that the Restriction Requirement does not establish that searching both inventions constitutes an undue burden to the Patent Office. Moreover, Applicants urge that the Restriction Requirement is contrary to public policy. Accordingly, Applicants submit that the Restriction Requirement is improper and should be withdrawn.

It is believed that no fee is required for the consideration of the paper. If, however a fee is required, the Assistant Commissioner is authorized to charge such fee, or credit any overpayment, to Deposit Account No. 50-0320.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP §803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without a serious burden,...even though it includes claims to distinct or independent inventions.” *Id.*

Applicants urge that the restriction requirement does not meet the second of these criteria as the search for oil-in -water emulsion formulations overlap with the search for the process of making and the method of administration of these formulations. Thus, in order to conduct a comprehensive search on oil-in -water emulsion formulations comprising insecticides, in particular pyrethroids, one would also search on the preparation of pyrethroid formulations and the methods of using the same.

Further, it is respectfully urged that restricting the claims in the manner suggested in the Restriction Requirement constitute an undue burden to Applicants as well as the public. The cost of prosecuting and maintaining at least three patents and possibly more, if the election of species is used a restriction requirement, is unreasonable in view of the fact that the three groups and active agents, are so closely related. Further, the public is inconvenienced, as they will not know whether or not Applicants will file a divisional application to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent application.

Accordingly, modification or withdrawal of this Requirement is requested, and an early action on the merits is earnestly solicited.

Respectfully submitted,

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